

**THE SCHOOL DECISION
POWER OF ATTORNEY:
KRS 27A.095**

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SCHOOL POWER OF ATTORNEY OUTLINE

I. INTRODUCTION

- “School power of attorney” originated as House Bill 45 in the 2006 Regular Session of the Kentucky General Assembly, sponsored by Representative Larry Clark.
- Anecdotal evidence suggests that greater numbers of grandparents are taking care of children and want authority to consent to medical treatment and make enroll in school (and make school decisions) without having to go through the time and expense of court guardianship or custody proceedings.
 - Ordinarily, the District Court has exclusive jurisdiction for guardianship (in KRS Chapter 387).
 - In these cases, Court uses a best interest of the child standard.
 - Alternatively, grandparents could seek legal custody under KRS Chapter 403 but would have to meet definition of “de facto custodian” for standing to bring such actions.
 - To be a “de facto custodian,” must be primary caregiver/financial supporter for: 6 months if child is less than 3 years old; 1 year if older than 3 years.
- House Bill 45 was designed to allow grandparents to obtain this authority through the execution of an out-of-court document (the bill contemplated an “affidavit,” though it wound up being a “POA”).
- To understand exactly what happened with the Kentucky bill that ultimately became KRS 27A.095, it may be helpful to consider House Bill 45 as originally intended (time permitting).
- We will then go through KRS 27A.095 as enacted, as well as both versions of the AOC Form 796 that were created pursuant to the statute.
- We will review some of the potential issues that may arise as a result of the current versions of the statute and AOC form.
- Finally, we will review House Bill 469, recently introduced at the 2009 Kentucky General Assembly, and how it attempts to resolve some of these issues.

II. HOUSE BILL 45 (AS PROPOSED IN 2006)

- A. Basic premise of proposed legislation was to allow a parent or legal custodian to delegate authority to consent to medical treatment (with limitations) or make school decisions to a CAREGIVER (intended to cover grandparents but definition includes any adult person with whom the minor resides).
 - 1. Structured so that Cabinet for Health and Family Services would create an AFFIDAVIT establishing this transfer of authority. However, the proposed legislation set forth several REQUIREMENTS that would have to be met and included in this affidavit.
- B. Key Specific Requirements Regarding the Affidavit
 - 1. Statement by the Affiant that the minor RESIDES in the Caregiver's home;
 - 2. Statement IDENTIFYING any other persons with legal relationships to the minor (parents, custodians, de facto custodians, etc.);
 - 3. A NOTICE requiring the Caregiver to notify the school in the event the minor ceased to reside with the caregiver OR if the minor's parent or legal custodian revoked the authority delegated by the affidavit;
 - 4. Legislation included a provision making it a Class A misdemeanor to knowingly make misrepresentations in the affidavit;
 - 5. Proposal would have allowed a contrary decision of a natural parent or guardian to SUPERSEDE a school-related decision of the caregiver;
 - 6. Affidavit could be revoked by EITHER parent OR would be AUTOMATICALLY REVOKED if the child ceased to reside with the caregiver.
- C. Specific Requirements as to Execution of Affidavit
 - 1. Proposed legislation generally just required notarized signatures of minor's parents, de facto custodian, guardian, etc. indicating their approval of the delegation of authority, BUT
 - 2. Proposal ALSO would have allowed the CAREGIVER to execute the affidavit and give him or herself the authority by simply stating that the parents/legal guardian were UNAVAILABLE and describing the caregiver's efforts to locate them. **THIS WAS THE SPECIFIC PROVISION THAT THE KY SENATE DID NOT LIKE BECAUSE IT WAS PERCEIVED THAT IT COMPROMISED THE RIGHTS**

**OF THE NATURAL PARENT / GUARDIAN AND ELEVATED
THE RIGHTS OF THE CAREGIVER TOO MUCH.**

D. Key Provisions Relating Specifically to Schools

1. Execution of Affidavit would allow for enrollment of child in school WHERE CAREGIVER RESIDES, so long as the school had no reasonable grounds to believe that affidavit is being presented solely to allow the minor access to that district's athletics or school programs.
2. Proposal contained provision that if school relied on duly executed affidavit, NO FURTHER DUTY TO INVESTIGATE circumstances of delegation of authority.
 - i. Thus, school's only real duty would be to check to ensure that child resided with caregiver, that affidavit was not executed just for school purposes, and to make sure the affidavit was properly executed, then no further responsibilities unless ACTUAL KNOWLEDGE that a natural parent disagreed with the decision-making of Caregiver.
3. Proposal contained provision that if school relied in good faith on affidavit, then NO CRIMINAL, CIVIL, or PROFESSIONAL LIABILITY would attach to school officials as result of delegation of authority.

III. **KRS 27A.095 (AS ENACTED AFTER REVISION OF HB 45)**
– SEE APPENDIX 1

- A. Because Senate disapproved of option for Caregiver to self-execute affidavit delegating decision-making, ALL PROVISIONS AND PRELIMINARY REQUIREMENTS for the delegation of this authority to a non-parent were STRUCK FROM THE BILL.
- B. As enacted, revised House Bill 45 simply creates the three-paragraphs of KRS 27A.095, setting forth:
 - 1. A definition of medical treatment, including EXCEPTIONS, such as:
 - i. Consent to HIV / AIDS testing;
 - ii. **Controlled substance testing;** or
 - iii. Any other testing requiring a separate court order or informed consent of parent.
 - 2. The basic statement that “The Administrative Office of the Courts **shall develop a standard power of attorney for the limited purpose of establishing authority to consent to medical treatment for a minor and to make school-related decisions for a minor.**
 - 3. That the standard form shall be available through the Cabinet for Health and Family Services or the circuit court clerk’s office.
- C. Although KRS 27A.095 certainly simplifies what was proposed in House Bill 45, its simplicity raises significant legal questions and potential problems.
 - 1. The statute merely states that the AOC shall develop the form; it does not require that this particular form be used to effect the delegation of authority (although this is suggested).
 - i. Question then, is whether or not this form has to be used or whether a separate form can be used.
 - 2. The statute contains NO REQUIREMENTS WHATSOEVER as to what is necessary to effect a legal delegation of these powers (except execution of the AOC Form). For example:
 - i. No requirement as to residence with caregiver;
 - ii. No requirement as to circumstances under which authority may be delegated (i.e. no prohibition on delegating authority JUST FOR SCHOOL PURPOSES);

- iii. No requirements as to proper execution of POA (i.e. who can sign, whether it has to be notarized, notice to non-custodial parent, etc.);
 - iv. No guidance on the scope of the authority, except that it is limited to consenting to medical treatment and making school-related decisions – does this include ability to enroll student in Attorney-in-Fact's school district as resident student? Unclear.
 - v. No provisions regarding superseding decisions by natural parents / legal guardians or revocation of POA; and
 - vi. No limitations on the school's duty to investigate or relieving school of any potential liability for relying on affidavit.
3. Exception from medical treatment of ability to consent to controlled substance testing apparently means that an attorney-in-fact caregiver could consent to a student playing athletics, but COULD NOT consent to drug testing in a district that has adopted a drug testing program for athletics and extracurricular activities.
4. Essentially puts burden on AOC to come up with requirements for successful delegation of authority, without giving AOC any guidance as to what such requirements might be.

IV. AOC FORM – 796 (AUGUST 2006 VERSION)
– SEE APPENDIX 2

- A. AOC's first try at form; very straightforward.
- B. Just mimics statute; note that there are no requirements whatsoever except for:
 - i. Must be executed in front of notary by parent or legal guardian;
 - ii. Scope is limited to consent for medical decisions (as defined by the statute); and school-related decisions;
 - iii. Basically says attorney-in-fact to stand in place of delegating parent as if delegating parent took same action;
 - iv. Contains language that only way POA is terminated is if revoked in writing by delegating parent.
 - v. Contains notice that delegation of authority is not a court order and does not affect legal custody / guardianship of child.
 - vi. Vague reference to criminal sanction if falsified, although statute does not back this up.
 - vii. Noteworthy that original form contained no references to actual residence with attorney-in-fact.

V. AOC FORM – 796 (CURRENT FEBRUARY 2008 VERSION)
-- SEE APPENDIX 3

- A. In response to input from Jefferson County schools and Rep. Clark's office regarding the omission of the residency requirement, AOC revised form in February 2008.
- B. Revised version now includes requirement that:
 - i. Delegating parent AFFIRM that minor child resides with attorney-in-fact at the specific address required by the form; and
 - ii. Contains a notice that the school district may REGULARLY REVIEW AND/OR AUDIT THE RESIDENCY OF THE CHILD.
- C. So, what responsibilities do schools have when asked to accept this form?

- i. Make sure form executed is current February 2008 version that gives delegating parent and attorney-in-fact notice that child must reside with attorney-in-fact and then continue to audit child's residency.
- ii. Given this new "out" for the school if minor does not reside with attorney-in-fact, school should require proof of residence with AIF at time POA is presented to school.
- iii. Periodically review / audit residency of the child.
- iv. If child no longer resides with attorney-in-fact in that district, then should not be allowed to go to school in that district unless eligible under district nonresident student procedures. At the very least, should owe district tuition.

D. Potential Problem

- i. No authority from statute for requirements in AOC form – not sure what result would be if challenged.

VI. **ISSUES WITH CURRENT STATUTORY SCHEME AND INCORPORATED
AOC FORM - 796**

A. Potential for Misuse / Havoc with Respect to Student Residence Issues

1. QUESTION IS, CAN PARENT ESTABLISH CHILD AS TUITION-FREE STUDENT IN ANOTHER DISTRICT SIMPLY BY EXECUTING POWER OF ATTORNEY?
 - i. Answer is **NO** – statute is silent, so must analyze Kentucky school residency laws to determine.
 - ii. KRS 158.030 – every child RESIDING in district 6 years of age or older has privilege of attending school in district.
 - iii. KRS 158.100 – requires school district to provide 12 grade service for all pupils RESIDING in district.
 - iv. KRS 158.120 – sets forth that board may charge reasonable tuition for each child whose parent/guardian/legal custodian is NOT a bona fide resident of the district.
 - v. KRS 159.010 – sets forth that each parent, guardian, or other person having custody or CHARGE of any child between 7 and 16 shall send child to school in district in which child RESIDES.
2. Based on these statutes, general rule is that child may attend school tuition-free in district where LEGAL CUSTODIAN resides.
SEE KY. OAG 78-64.
 - i. Many district policies may define child's legal residence this way.
3. However, if child is in fact a resident of another district but NOT living with his/her parent or legal custodian, different issue arises.
SEE KY. OAG 78-64.
 - i. If the evidence is that the child ACTUALLY RESIDES there, then the child must be allowed to attend school in that district regardless of whether residence with parent or not. **The question is, should the school charge tuition in these situations?**
 - ii. Interpretation of Ky. OAG 78-64 is that school should NOT charge tuition in these situations SO LONG AS CHILD IS NOT RESIDING IN THAT DISTRICT **PRIMARILY FOR SCHOOL PURPOSES.**

- a. Though no Kentucky case, this interpretation is consistent with later U.S. Supreme Court decision as well as rationales of courts in other jurisdictions.
 - iii. But, if evidence is that student is going to school in that district JUST FOR SCHOOL PURPOSES, then the district CAN treat as non-residential student for tuition purposes.
 - a. How do you determine if the student is only going to school in that district for school purposes?
 - b. Hard to tell – consider: (1) permanency of the child’s residence there; (2) extent to which parent/guardian still maintains control over child (notwithstanding the POA); and (3) any non-educational reasons the student may be attending school there (such as athletics).
- 4. So, if district is presented with a “school POA,” school’s FIRST INQUIRY should be into WHETHER STUDENT RESIDES WITH ATTORNEY-IN-FACT IN THE DISTRICT.
 - i. If NO, then the Form-796 POA is invalid;
 - ii. If YES, then the inquiry expands to WHETHER THE STUDENT IS THERE JUST FOR SCHOOL PURPOSES.
 - a. If NO, entitled to tuition-free education, BUT
 - b. If YES, school should consider charging tuition (case-by-case basis per Ky. OAG 78-64).
- 5. **Note how other states with “School POA” statutes have handled this issue – see Tennessee (2003), Ohio (2004), and Georgia (2008), see proposal for Kentucky set forth in Appendix 4**
 - i. These states EXPLICITLY CONDITION ability to execute school POA (and thus to enroll child in district where AIF lives) on:
 - a. Proof of ACTUAL RESIDENCE with Attorney-in-Fact; and
 - b. a “HARDSHIP” requirement (this takes care of the inquiry into whether a student is enrolling just for school purposes)
 - 1. Statutes define “hardship” to include a parent’s illness, incarceration, loss of mental capacity, loss

of home to natural disaster, entry into substance abuse treatment, inability to care for child, etc.

- ii. Other states then put teeth into statute to penalize intentional misuse of POA
 - a. Make misrepresentation a crime;
 - b. Include provision for monetary sanction if school loses tuition money due to its reliance on fraudulent POA; and
 - c. Automatic revocation of POA if student no longer resides with AIF.

B. Problems with Execution of Form / Resolutions of Conflict in Decision-Making

- 1. Who can execute POA and delegate authority?
 - i. Kentucky statute and form make no provisions for joint custody situations where the parents do not live together.
 - ii. Thus, EITHER parent can execute the POA form.
 - iii. There is no requirement that delegating parent must advise school of other persons who have legal relationship to child.
- 2. Execution Requirements From Other States
 - i. Usually, require execution by BOTH parents if both have custody;
 - a. OHIO allows parent with RESIDENTIAL custody to execute without consent of non-residential custodian;
 - ii. If only ONE parent has legal custody, then that parent can execute POA, BUT
 - iii. That parent has to notify other parent in writing by certified mail.
 - a. Gives parent ability to seek Court order.
 - iv. NOTE that OHIO also allows for a grandparent to file a self-executing affidavit under certain conditions – this is specifically what Kentucky Senate rejected.

C. How should school resolve conflicts between decision of non-delegating parent and attorney-in-fact?

1. Kentucky statute / form – does not address.
 - i. If question arises, appears to place burden on school to ascertain legal standing in order to determine decision-making.
 - ii. School should probably inquire at time POA presented as to legal standing of both parents – is there a Court order?
 - iii. If the delegating parent is the sole custodian (or sole decision-maker pursuant to a Court order), then there is no problem.
 - iv. If parent is a non-custodial parent (i.e. does not have decision-making authority) then the POA does not mean much.
 - v. Problem occurs when you have JOINT CUSTODIANS
 - a. What happens if only one joint custodian executes POA and other disagrees with decision by AIF?
 - b. There is no provision in the statute or the form to address this issue.
 - c. Note that House Bill 45 would have given preference to the decision of the NATURAL PARENT / LEGAL CUSTODIAN.
 - d. BEST ADVICE for school would be to seek clarification of legal status of parents – if no Court order and joint custodians, then school should advise parents to seek legal determination by Court.
2. How have other states handled?
 - i. Allow non-delegating parent to SUPERSEDE any decision by attorney-in-fact, so long as that parent has joint custody;
 - ii. Other states also would allow either parent to revoke POA, so long as revoking parent has joint custody.

D. Problems with Additional Burden on Schools

1. Current statute / form combination do not excuse school from further investigation if good faith reliance on POA.
2. Instead, under current scheme, responsibility for several investigative aspects of POA issue have been placed squarely on schools.

3. No provision in statute or form relieving school of civil, criminal, or professional liability upon good faith reliance on POA.
- E. Are there any rights reserved just to natural parent / guardian that can NOT be delegated by POA to AIF (i.e. under IDEA, FERPA, or NCLB)?
1. Consent to testing for controlled substances;
 2. AOC Form makes it clear that parent is delegating all rights that that parent has.
 3. Note that under IDEA / FERPA / NCLB, “parent” is defined to include an “INDIVIDUAL ACTING IN PLACE OF NATURAL PARENT WITH WHOM THE CHILD LIVES.”
 4. FERPA regs. allow school to “give full rights to either parent.”

VII. HOUSE BILL 469 (2009 GENERAL ASSEMBLY) – SEE APPENDIX 4

- A. The recently proposed House Bill 469 attempts to resolve some of the problems presented by KRS 27A.095 and AOC Form-796.

27A.095 Standard power of attorney regarding medical treatment and school-related decisions for a minor.

- (1) As used in this section, "medical treatment" means any medical, chiropractic, optometric, or dental examination, diagnostic procedure, and treatment, including but not limited to hospitalization, developmental screening, mental health screening and treatment, preventive care, pharmacy services, immunizations recommended by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices, well-child care, and blood testing, except that "medical treatment" shall not include HIV/AIDS testing, controlled substance testing, or any other testing for which a separate court order or informed consent is required under other applicable law.
- (2) The Administrative Office of the Courts shall develop a standard power of attorney for the limited purpose of establishing authority to consent to medical treatment for a minor and to make school-related decisions for a minor.
- (3) The standard power of attorney developed under subsection (2) of this section shall be available through the Cabinet for Health and Family Services and the office of the circuit clerk where the informal caregiver resides.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 198, sec. 2, effective July 12, 2006.

C-796

Rev. 8-06

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Commonwealth of Kentucky

Court of Justice www.kycourts.net

KRS 27A.095



STANDARD POWER OF ATTORNEY FOR MEDICAL/SCHOOL DECISION MAKING

KNOW ALL PERSONS BY THESE PRESENTS:

That I, _____, a resident of _____ (city) _____ (county) _____ (state) residing at _____ (street address) do hereby make, constitute, and appoint _____, residing at _____ (full address) my true and lawful attorney in fact for me and in my name, place and stead, in their sole discretion, to transact, handle and dispose of the limited matters set forth herein, specifically:

To consent to medical treatment for _____, minor child, of whom I am the biological parent, legal custodian or legal guardian. Medical treatment means any medical, chiropractic, optometric, or dental examination, diagnostic procedure, and treatment, including but not limited to hospitalization, developmental screening, mental health screening and treatment, preventive care, pharmacy services, immunizations recommended by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization practices, well-child care, and blood testing, except that "medical treatment" shall not include HIV/AIDS testing, controlled substance testing, or any other testing for which a separate court order or informed consent is required under other applicable law.

To make school-related decisions for _____, minor child, of whom I am the biological parent, legal custodian or legal guardian.

This instrument is intended to, and does hereby, grant to my attorney full power and authority to do and perform each and every act and thing whatsoever requisite, necessary and proper to be done, in the exercise of the rights and powers herein granted, as fully, to all intents and purposes, as I might or could do personally present, hereby ratifying and confirming all that my attorney shall do or cause to be done by virtue thereof.

The rights, powers and authority of my attorney shall commence upon execution of this instrument and shall remain in full force and effect until this instrument is terminated by me in writing.

So acknowledged this _____ day of _____, 2_____.

Parent/Legal Guardian's Name (printed)

Parent/Legal Guardian's Signature

Subscribed and sworn before me on _____, 2_____.

_____, Notary Public. My commission expires: _____, 2_____.

THIS IS NOT A COURT ORDER.

The execution or possession of this form does not signify that a person has lawful custody or guardianship of the child mentioned herein. The limited purpose of this form is to indicate that the above-named person given power of attorney has the authority to consent to medical treatment and to make school-related decisions for the above-named child. This form is not required to be filed with the circuit court clerk. Falsification of this document may constitute a criminal offense.

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Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
KRS 27A.095



**STANDARD POWER OF ATTORNEY FOR
MEDICAL/SCHOOL DECISION MAKING**

KNOW ALL PERSONS BY THESE PRESENTS:

That I, _____, a resident of _____ (city) _____ (county) _____ (state) residing at _____ (street address) do hereby make, constitute, and appoint _____, residing at _____ (full address) my true and lawful attorney in fact for me and in my name, place and stead, in their sole discretion, to transact, handle and dispose of the limited matters set forth herein, specifically:

To consent to medical treatment for _____, minor child, of whom I am the biological parent, legal custodian or legal guardian. Medical treatment means any medical, chiropractic, optometric, or dental examination, diagnostic procedure, and treatment, including but not limited to hospitalization, developmental screening, mental health screening and treatment, preventive care, pharmacy services, immunizations recommended by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization practices, well-child care, and blood testing, except that "medical treatment" shall not include HIV/AIDS testing, controlled substance testing, or any other testing for which a separate court order or informed consent is required under other applicable law.

To make school-related decisions for _____, minor child, of whom I am the biological parent, legal custodian or legal guardian. I hereby affirm that the minor child resides with _____ (attorney in fact) at _____ (full address).

This instrument is intended to, and does hereby, grant to my attorney full power and authority to do and perform each and every act and thing whatsoever requisite, necessary and proper to be done, in the exercise of the rights and powers herein granted, as fully, to all intents and purposes, as I might or could do personally present, hereby ratifying and confirming all that my attorney shall do or cause to be done by virtue thereof.

It is fully understood that any school district asked to recognize the authority assigned by this instrument may regularly review and/or audit the residency of the child. Falsification of this document may constitute a criminal offense.

The rights, powers and authority of my attorney shall commence upon execution of this instrument and shall remain in full force and effect until this instrument is terminated by me in writing.

So acknowledged this _____ day of _____, 2_____.

Parent/Legal Guardian's Name (printed)

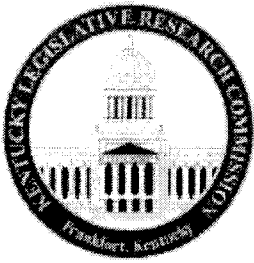
Parent/Legal Guardian's Signature

Subscribed and sworn before me on _____, 2_____.

_____, Notary Public. My commission expires: _____, 2_____.

THIS IS NOT A COURT ORDER.

The execution or possession of this form does not signify that a person has lawful custody or guardianship of the child mentioned herein. The limited purpose of this form is to indicate that the above-named person given power of attorney has the authority to consent to medical treatment and to make school-related decisions for the above-named child. This form is not required to be filed with the circuit court clerk. Falsification of this document may constitute a criminal offense.



Kentucky Legislature

HB469

09RS

WWW Version

The hyperlink to a bill draft that precedes a summary contains the most recent version (Introduced/GA/Enacted) of the bill. If the session has ended, the hyperlink contains the latest version of the bill at the time of sine die adjournment. Note that the summary pertains to the bill as introduced, which is often different from the most recent version.

Includes opposite chamber sponsors where requested by primary sponsors of substantially similar bills in both chambers and jointly approved by the Committee on Committees of both chambers. Opposite chamber sponsors are represented in italics.

HB 469/FN (BR 1621) - W. Stone, K. Stevens, L. Belcher, L. Clark, J. Greer, R. Henderson, C. Hoffman, S. Santoro, F. Steele

AN ACT relating to child care.

Create new sections of KRS Chapter 405, relating to parent and child, to permit a power of attorney for care of a minor child; create definitions; establish the circumstances under which delegation of caregiving authority is permissible; establish the method of execution of the power of attorney and the required provisions of the instrument; establish authority of the agent caregiver; provide that a parent's decision supersedes that of the caregiver when there is conflict in decision making; establish methods for termination of the power of attorney; provide protection from liability for good-faith reliance on power of attorney; create penalties for false statements and fraudulent acts concerning the power of attorney.

Feb 13-introduced in House

Feb 23-to Health & Welfare (H)

AN ACT relating to child care.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

(1) A parent or parents of a minor child may delegate to any adult residing in this state caregiving authority when hardship prevents the parent or parents from caring for the child. This authority may be delegated without the approval of a court by executing in writing a power of attorney for care of a minor child in a form substantially complying with Sections 1 to 8 of this Act.

(2) As used in Sections 1 to 8 of this Act, "hardship" shall include but not be limited to:

(a) The serious illness, incarceration, or anticipated incarceration of a parent;

(b) The physical or mental condition of the parent or the child is such that proper care and supervision of the child cannot be provided by the parent;

(c) The temporary inability of the parent to provide financial support or parental guidance to the child; or

(d) The loss or uninhabitability of the child's home as the result of a natural disaster.

(3) As used in Sections 1 to 8 of this Act, the term "parent" includes a legal guardian or legal custodian of the minor child.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

(1) The instrument creating the power of attorney for care of a minor child shall be executed as follows:

(a) The instrument shall be executed by both parents, if both parents are living and have joint custody of the minor child with no designation of a primary residential custodian by a court of competent jurisdiction;

(b) If both parents are living and have joint custody of the minor child, but one (1) parent has been designated the primary residential custodian by a court of competent jurisdiction, then the primary residential custodian shall execute the power of attorney; or

(c) If only one (1) parent has legal custody of the minor child, then that parent shall execute the power of attorney.

If only one (1) parent executes the power of attorney pursuant to paragraph (b) or (c) of this subsection, then the executing parent shall provide a copy of the power of attorney to the other living parent at that parent's last known address, by certified mail, return receipt requested, within five (5) days of the execution of the power of attorney.

(2) The instrument creating the power of attorney shall include but is not limited to the following provisions:

(a) The name and address of the parent or parents executing the power of attorney;

(b) If the power of attorney is executed by only one (1) parent as set forth in paragraph (b) or (c) of subsection (1) of this section, a statement identifying the minor's other parent and any other person with legal standing relative to the minor's custody, a description of the legal relationship each person has with the child, and a statement that a copy of the power of attorney is being sent to each person at that person's last known address, by certified mail, return receipt requested, within five (5) days of the execution of the power of attorney;

(c) The name and address of the caregiver to whom the power of attorney is being given, and the relationship of that person to the minor child;

(d) A statement that the caregiver is an adult over the age of eighteen (18) and under no disability at the time of execution of the instrument;

- (e) The name and date of birth of the minor child to whom the power of attorney applies;
- (f) A statement that the minor child shall reside with the caregiver at the caregiver's address as provided in paragraph (c) of this subsection;
- (g) A statement specifying the hardship or hardships which prevent the parent or parents from caring for the child;
- (h) A statement certifying that the execution of the instrument is not for the primary purpose of enrolling the child in a school to participate in the academic or athletic programs provided for by that school or for any other unlawful purpose, unless otherwise allowed by federal law;
- (i) A statement that the caregiver shall have the authority set forth in Section 3 of this Act and any additional powers specified in the power of attorney;
- (j) A notice that any person making false statements in the instrument shall be subject to prosecution for the crime of false swearing and shall be liable for restitution to the school district in which the minor is fraudulently enrolled pursuant to Section 7 of this Act;
- (k) A notice that execution of the instrument does not confer upon the caregiver the status of de facto custodian, guardian, or legal custodian of the minor;
- (l) A notice that the power of attorney may be revoked in writing by the parent or parents who executed the instrument or a court of competent jurisdiction as set forth in Section 5 of this Act and requiring the parent to notify any health care provider or school to which the instrument was presented of the revocation of the instrument; and
- (m) A notice that the power of attorney shall be revoked if the minor ceases to reside with the caregiver and requiring the caregiver to notify any health care provider or school to which the instrument was presented if the minor

ceases to reside with the caregiver.

(2) The power of attorney for care of the minor child shall be signed and acknowledged before a notary public by the parent or parents and the caregiver to whom the power of attorney is delegated.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

(1) Through the power of attorney for care of a minor child, the parent may authorize the caregiver to perform the following functions without limitation:

(a) Enroll the child in school and extracurricular activities;

(b) Consent to medical, dental, and mental health treatment for the child;

(c) Provide access to medical, dental, and mental health records, including the disclosure of the contents of those records, to others;

(d) Provide for the child's food, lodging, housing, recreation, and travel; and

(e) Any additional powers as specified by the parent.

(2) The caregiver shall have the right to enroll the minor child in the school district in which the caregiver resides. The school district in which the caregiver resides shall allow a caregiver with a properly executed power of attorney for care of the minor child to enroll the minor child but, prior to enrollment, may require documentation of the minor child's residence with the caregiver and documentation or other verification of the validity of the parent's stated hardship.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

(1) The power of attorney provided for in Sections 1 to 8 of this Act does not grant legal custody to the caregiver.

(2) If at any time the parent or parents who executed the instrument conveying the power of attorney pursuant to Section 2 of this Act disagrees with the decision of the caregiver or chooses to make health care or school-related decisions for the

minor child, then the decision of that parent shall supersede the decision of the caregiver. The parent or parents shall give written notification to the health care provider or the school, whichever is applicable, of the specific authority of the caregiver that is revoked pursuant to the termination requirements in Section 5 of this Act.

- (3) A health care provider or school official shall refuse to honor the decision of the caregiver if the health care provider or school official has actual knowledge of a superseding decision by a parent pursuant to subsection (2) of this section.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

- (1) The power of attorney for care of a minor child may be terminated, in whole or in part, by an instrument in writing signed by the parent or parents who executed the instrument conveying the power of attorney pursuant to Section 2 of this Act. The power of attorney for care of a minor child may also be terminated by any order of a court of competent jurisdiction that appoints a legal guardian or legal custodian.
- (2) The power of attorney for care of a minor child shall be terminated at the time the minor child no longer resides with the caregiver, and the caregiver shall notify the school in which the caregiver had enrolled the child of the revocation whenever a change in circumstances results in a change of residence for the child.
- (3) The revoking parent or court, whichever is applicable, shall send a copy of the revocation of the power of attorney to each of the following by certified mail, return receipt requested:
- (a) The caregiver to whom the power of attorney was originally granted; and
- (b) The school, health care providers, and others known to the parent or court, whichever is applicable, who have relied upon the power of attorney.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

Any person, school official, or health care provider who acts in good faith reliance on a power of attorney for care of a minor child shall not be:

(1) Obligated to undertake further investigation into the circumstances forming the basis of the caregiver's authority, except as set forth in Sections 1 to 8 of this Act;

or

(2) Subjected to criminal or civil liability or professional disciplinary action for that person's, official's, or provider's reliance on the power of attorney.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

Any caregiver accepting the power of attorney, as well as the parent, guardian, or other legal custodian who executes the power of attorney, who enrolls a student in a school district while fraudulently representing the child's current residence or the parent's hardship or circumstances for issuing the power of attorney, is liable for restitution to the school district for an amount equal to the per pupil expenditure for the district in which the student is fraudulently enrolled.

(1) Restitution shall be cumulative for each year the child has been fraudulently enrolled in the district.

(2) Restitution shall be payable to the school district and, if litigation is necessary to recover the restitution, the caregiver accepting the power of attorney, parent, guardian, or other legal custodian shall be liable for the costs and fees, including reasonable attorney's fees, of the school district.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 8 of this Act may be cited as the Power of Attorney for Care of a Minor Child Act.

➔Section 9. The following KRS section is repealed:

27A.095 Standard power of attorney regarding medical treatment and school-related decisions for a minor.